

NOT YET SCHEDULED FOR ORAL ARGUMENT

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Case No. 16-1132  
*Consolidated with Case No. 16-1173*

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PRIME HEALTHCARE PARADISE VALLEY, LLC,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

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**PETITIONER'S RESPONSE TO THE MOTION OF THE NATIONAL  
LABOR RELATIONS BOARD TO REMOVE THIS CASE FROM  
ABEYANCE, SUMMARILY GRANT THE COMPANY'S PETITION FOR  
REVIEW IN PART AND DENY THE BOARD'S CROSS-APPLICATION  
FOR ENFORCEMENT IN PART, AND REMAND TO THE BOARD THE  
REMAINDER OF THE CASE**

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PRIME HEALTHCARE PARADISE VALLEY, LLC

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA:

On May 23, 2018, the National Labor Relations Board (the “Board”), by its Deputy General Associate Counsel, respectfully moved this Court to remove this case from abeyance, summarily grant review and deny enforcement of that portion of the Board’s Order governed by the United States Supreme Court’s decision in *Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018), and remand to the Board the remainder of the case.

The Petitioner agrees that the May 21, 2018 United States Supreme Court decision in *Epic Systems*, holding that employers maintaining arbitration agreements that contain class and collective action waivers are lawful, renders the Board’s finding that Petitioner’s arbitration agreement at issue here was unlawfully maintained is not enforceable.

The Petitioner further agrees that Board decision in *The Boeing Company* which rejected the “reasonably construe” standard eliminates the Board’s rationale for its finding at issue here - that the Petitioner’s arbitration agreement restricts employees’ rights to file unfair labor practice charges with the Board.

Based on the foregoing, the Petitioner does not object to the Board’s Motion to submit for partial summary grant of review and denial of enforcement of the Board’s Order as it relates to the *Epic Systems* decision. Further, the Petitioner

does not object to the Motion to sever and remand *The Boeing Company* issue to the Board for further review and consideration.

Dated: May 30, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Jason W. Kearnaghan

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Petitioner certifies that its Response contains 244 words of proportionally-spaced, 14-point type, and that the word processing system used was Microsoft Word.

Dated: May 30, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on this 8th day of September, 2016, I caused this **PETITIONER'S RESPONSE TO THE MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO REMOVE THIS CASE FROM ABEYANCE, SUMMARILY GRANT THE COMPANY'S PETITION FOR REVIEW IN PART AND DENY THE BOARD'S CROSS-APPLICATION FOR ENFORCEMENT IN PART, AND REMAND TO THE BOARD THE REMAINDER OF THE CASE** to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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Dated: May 30, 2016

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